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Paper No. 13

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**DEC 07 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Gary W. Lampkins : DECISION ON PETITION  
Application No. 10/046,164 :  
Filed: 16 January, 2002 :  
For: STAY TIE II :

This is a decision on the renewed petition filed on 17 October, 2005, under 37 CFR 1.137(b).<sup>1</sup>

The petition is again **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned on 16 October, 2003, for failure to file a proper reply to the Notice of Non-Compliant

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<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Amendment (37 CFR 1.121), mailed on 15 August, 2003, which set a one (1) month shortened period for reply. On 15 September, 2003, petitioner filed an amendment. However, the examiner determined by letter mailed on 8 October, 2003, that the amendment was not compliant with 37 CFR 1.121(c), and stated that the time for reply continued to run from the Notice mailed on 15 August, 2003. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 16 April, 2004. The petition filed on 24 August, 2005, was dismissed on 29 September, 2005.

The petition lacks the required reply. In this regard, the examiner has determined that the reply filed with the present renewed petition does not comply with the Notice of Non-Compliant amendment mailed on 10 April, 2003. A copy of the Advisory Action Before the Filing of An Appeal Brief is enclosed for petitioner's reference in preparing a proper reply.


Further correspondence with respect to this matter should be addressed as follows:

By mail:            Mail Stop Petition  
                    Commissioner for Patents  
                    P.O. Box 1450  
                    Alexandria, VA 22313-1450

By FAX:            (571) 273-8300  
                    Attn: Office of Petitions

By hand:           Customer Service Window  
                    Mail Stop Petition  
                    Randolph Building  
                    401 Dulany Street  
                    Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

  
Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

ATTCH:            Advisory Action Before the Filing of An Appeal Brief